

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090777

06/14/2021

HONORABLE JANICE CRAWFORD

CLERK OF THE COURT
V. Felix
Deputy

SUN VILLAGE COMMUNITY ASSOCIATION CHAD M GALLACHER

v.

LELAND D SEARLES, et al.

LELAND D SEARLES
14494 W BUFFALO TRL
SURPRISE AZ 85374

CAROL A SEARLES
14494 W BUFFALO TRL
SURPRISE AZ 85374
DOUGLAS SEARLES
1034 HAVEN CT
FIRCREST WA 98466
JUDGE CRAWFORD

MINUTE ENTRY

This matter comes before the Court on Plaintiff's Motion for Summary Judgment. The deadline for a response has passed and no response has been filed. However, because Plaintiff bears the burden of proving that it is entitled to judgment as a matter of law, Defendants are not required to respond to controvert the motion.

A plaintiff is entitled to summary judgment only if the motion is supported by admissible evidence that would compel any reasonable juror to find in its favor on all elements of the claim. See *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 292 P.3d 195 (Ct. App. 2012). In this case, Plaintiff's Motion for Summary Judgment relies on Exhibits attached to the Separate Statement of Facts contained as part of the Motion for Summary Judgment. The Exhibits include the Affidavit of David Gauvin, various business records, a print-out titled Rule 1006 Summary, letters, and other documents.

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A business record is admissible, regardless of its classification as hearsay, if a custodian testifies it was: (1) “made at or near the time by—or from information transmitted by—someone with knowledge;” (2) kept in the course of a regularly conducted business activity; (3) the making of the record was a regular practice; and (4) “the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.” Ariz. R. Evid. 803(6). Although, Plaintiff submitted the Affidavit of Mr. Gauvin, the Affidavit does not refer to any of the specific documents submitted with the Motion for Summary Judgment. Accordingly, the Affidavit falls short of the requirements set forth in *Wells Fargo Bank*, 231 Ariz. At 200, 292 P.3d at 214; *see also State v. Johnson*, 184 Ariz. 521, 524, 911 P.2d 527, 530 (Ct. App. 1994) (holding that when documents are attached and/or referenced in an affidavit, the affiant must establish that he or she reviewed the documents and was familiar with the manner in which they were prepared for them to be admissible).

Additionally, the Affidavit does not substantively address the accompanying evidence well enough to establish its admissibility or credibility. Finally, neither the Affidavit nor the documents attached as Exhibits allow the Court to evaluate the accuracy or the method of calculation of the alleged deficiency.

Based on the foregoing,

IT IS ORDERED Plaintiff’s Motion for Summary Judgment is denied.